



1776 K STREET NW  
WASHINGTON, DC 20006  
PHONE 202 719 7000  
FAX 202.719.7049

7925 JONES BRANCH DRIVE  
McLEAN, VA 22102  
PHONE 703 905 2800  
FAX 703.905.2820

www.wileyrein.com

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Jan Witold Baran  
202.719.7330  
jbaran@wrf.com

July 30, 2007

**BY HAND DELIVERY**

Mr. Adam Schwartz  
Office of General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 5819 (U.S. Chamber of Commerce)

Dear Mr. Schwartz:

On July 6, 2007, we received notification that on June 28, 2007, the Commission found reason to believe that our client violated the Federal Election Campaign Act of 1971, as amended, in the above-captioned MUR. Included with the notification was the Commission's Factual and Legal Analysis and four "Written Questions" directed to our client. Given the Commission's recent announcement that it will be initiating a rulemaking that may directly affect this MUR, we respectfully request that the proceedings in this MUR be held in abeyance until that rulemaking is completed.<sup>1</sup>

On June 25, 2007, three days before the Commission made its findings against our client, the Supreme Court of the United States issued its decision in *FEC v. Wisconsin Right to Life, Inc.* 127 S. Ct. 2652 (2007) ("*WRTL II*"). This important Supreme Court decision, which is highly relevant to this MUR, was not cited or addressed in the Factual and Legal Analysis.

Counsel to Wisconsin Right to Life, Inc. filed a petition for rulemaking dated July 18, 2007, with the Commission to implement *WRTL II*. See Petition for Rulemaking: Protecting "Genuine Issue Ads" from the "Electioneering Communication" Prohibition & Repealing 11 C.F.R. § 100.22(b) (July 18, 2007), available at [http://www.fec.gov/pdf/nprm/electioneering\\_comm/2007/petition\\_center\\_for\\_free\\_speech.pdf](http://www.fec.gov/pdf/nprm/electioneering_comm/2007/petition_center_for_free_speech.pdf). The following day, the Commission issued a press release announcing that the Commission would be initiating a rulemaking to incorporate *WRTL II* into its regulations. See Press Release, Commission to Conduct Rulemaking Following Supreme Court Ruling (July 19, 2007), available at <http://www.fec.gov/press/press2007/20070719rule.shtml>. The press release

<sup>1</sup> In making this request, we are not waiving our right to substantively respond to any of the above-described materials.

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Mr. Adam Schwartz

July 30, 2007

Page 2

explained that the rulemaking would be completed by the end of November, roughly 120 days from now.

*WRTL II* limits the government's ability to restrict speech like that at issue here and to investigate alleged violations of those restrictions by seeking discovery like that now sought by the FEC. Accordingly, *WRTL II* and the Commission's rulemaking to implement it has the potential to directly affect this MUR.

First, the rulemaking may dispose of this matter entirely. The only substantive offense alleged by the Commission entails making prohibited expenditures for "express advocacy" as defined by 11 C.F.R. § 100.22(b). But as the Petition for Rulemaking indicates in its title and text, the validity of 11 C.F.R. § 100.22(b) is going to be squarely at issue in the rulemaking as a result of *WRTL II*.

Second, even if the rulemaking does not dispose of this matter on its face by repealing 11 C.F.R. § 100.22(b), it may nonetheless alter the regulatory language. This would necessarily require a different legal analysis than that currently contained in the Commission's Factual & Legal Analysis.

Third, the rulemaking could limit the FEC's ability to take the discovery now pending in this MUR given *WRTL II*'s extremely limited allowance for such discovery in these matters.

Rather than waste our collective time and resources arguing about legal standards that are subject to change within the next 120 days, we hope you will agree that suspending action in this matter is advisable until the rulemaking process is completed. We can then discuss how best to proceed in light of *WRTL II* and the Commission's accompanying rule.

Sincerely,



Jan Witold Baran

Caleb P. Burns

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